

**(2002) 12 AP CK 0017**

**Andhra Pradesh High Court**

**Case No:** Criminal Petition No. 3383 of 2002

Udarapu Chandrasekhar and  
Others

APPELLANT

Vs

The State of A.P.

RESPONDENT

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**Date of Decision:** Dec. 19, 2002

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 155(2), 156(1), 379, 406, 482

**Citation:** (2003) 1 ALD(Cri) 301 : (2003) 1 ALT(Cri) 549

**Hon'ble Judges:** P.S. Narayana, J

**Bench:** Single Bench

**Advocate:** C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

P.S. Narayana, J.

Heard Sri C. Padmanabha Reddy, the learned Senior Counsel representing Sri C. Praveen Kumar and also the learned Public Prosecutor Smt. K. Sesharajyam.

2. The Criminal Petition is filed u/s 482 of the Code of Criminal Procedure, 1973, hereinafter referred to as "Code" in short for the purpose of convenience. The facts in brief are as follows:

The petitioners are accused in C.C. No. 101/2001 on the file of Judicial First Class Magistrate, Achampet, Mahaboobnagar District. It is stated that the Circle Inspector of Police, Achampet filed charge sheet against the petitioners under Sections 379 and 406 I.P.C. It is stated that M/s. Patel Engineering Company Limited entered into contract with Andhra Pradesh State Electricity Board for its civil works at Srisailam Left Bank Hydro Electric Scheme Project at Srisailam Dam West and the Company

undertook the work of excavation of tunnels. For the purpose of excavation, the Electricity Department will supply structural and reinforcement steel for civil works to Patel Engineering Company. The Electrical Department will purchase the required steel and will store in central stores. As per the theoretical requirement, the field level Assistant Executive Engineer and Assistant Engineer will give a requisition to authorized representation of contractors to draw material from the central stores. The cost of total steel issued to the contractor will be recovered from the contractor's bills and after this the steel will be under the contractor's responsibility. It was also stated that the steel so received will be transported to the fabrication yard of the contractors at Egalapenta. There the fabrication work will be under taken as per the schedule issued by the field officers. During fabrication, the full length rods are to be cut which results in scrap of different lengths which remain in the fabrication yard. As per the terms of the contract agreement, cut rods of length of less than 2 M will not be taken back by the Department. In respect of those items, the contractor will take permission of the concerned authorities, obtain gate pass and will take away such scrap. The cut rods of length of more than 2 M will not be taken by the contractor but should devolute to the central stores. So it is alleged that the contractor is not supposed to take the cut rods of 2 M length or more. It was further alleged that on 17-5-2001 at about 4.30 A.M. A-1 to A-6 were caught while they were taking 550 numbers of 32 M.M. steel bars loaded in two lorries and four tippers on the instigation of A-7 on Srisailam - Hyderabad road in between Central stores and Domalapenta forest check post. It is alleged that all these 550 rods are more than 2 M length and instead of devoluting the rods, the accused were shifting the rods. It was further stated that according to the terms of the agreement, the required steel material for the works will be supplied by APGENCO at the rates specified in Schedule C of the agreement and the cost of the steel material is recovered from the running bills of the contractors. The contractor is the real owner of the property as the property was sold to him and as such the question of misappropriation or theft will not arise. In such circumstances, inasmuch as the failure of the terms of the agreement only will amount to civil liability, the petitioners had filed the present Criminal Petition u/s 482 of the Code.

3. Sri C. Padmanabha Reddy, the learned Counsel representing the petitioners had pointed out that petitioners 1 to 6 are only drivers and petitioner No. 7 is a contractor. The learned Counsel also contended that even if the allegations in the charge sheet are carefully scrutinized, as far as the drivers are concerned, it cannot be said that they are liable to be prosecuted under any of the provisions specified in the charge sheet either u/s 379 or u/s 406 I.P.C. The learned counsel also had drawn my attention to the terms and conditions of agreement and had pointed out the relevant provisions in general and Condition No. 10 in particular, and had contended that even if there is any deviation it is clearly a civil dispute and hence the proceedings in C.C. No. 101/2001 on the file of Judicial First Class Magistrate, Achampet are liable to be quashed.

4. Smt. K. Sesharajyam, the learned Public Prosecutor initially had drawn my attention to the limitations of exercising the inherent powers u/s 482 of the Code. The learned Public Prosecutor had contended that merely because incidentally a dispute may be a civil dispute, that by itself cannot be ground to quash criminal proceedings. It was also further contended that the allegations in the charge sheet are clear and categorical attracting the provisions u/s 379 and also Section 406 I.P.C. The learned Public Prosecutor had taken me through the allegations specified in the charge sheet. The learned counsel also contended that several of the evidentiary details which may have to be decided at the time of trial cannot be gone into at the stage of deciding a quash proceeding u/s 482 of the Code. The learned Public Prosecutor also contended that the breach of the conditions or otherwise of the agreement, are all factual aspects which may have to be gone into ultimately while letting in evidence by the parties and not at this stage and hence the said proceedings cannot be quashed. The learned Public Prosecutor also had placed reliance on STATE OF KARNATAKA Vs. M. DEVENDRAPPA 2002 SCC 539, [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), [Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others](#), [S.W. Palanitkar and others Vs. State of Bihar and another](#), .

5. Heard both the counsel.

6. The petitioners are charged under Sections 379 and 406 I.P.C. Before advertng to the other contentions, it may be appropriate to have a look at the material allegations in the charge sheet, which are as hereunder:

"During the course of investigation LW-11 examined and recorded the statements of LWs.1 to 7 in Part-II C.D. Visited the store yard and office of Patel Engineering Company at Srisailam Dam (West), seized Gate pass, Way bill books. Then LW-11 visited the Central Store Yard, SLBHES at Domalapenta and the place where exactly the vehicles were intercepted. The place is 200 M south from Central store (183/4 KM stone) on Srisailam - Hyderabad road. On the same day i.e., on 17-5-2001 the accused persons A1 to A6 were arrested after recording their confession and recovering the stolen property in the presence of LWs.8 and 9. Subsequently the A1 to A6 were sent to court for judicial remand.

During the course of investigation it is established that M/s. Patel Engineering Co. Ltd., entered into contract with Andhra Pradesh State Electricity Board for its civil works at SLBHES project at Srisailam Dam West. This company will undertake the work of excavation of tunnels. For the purpose of excavation Electricity Department will supply structural and reinforcement steel for civil works to Patel Engineering Company. Electricity Department will purchase the required steel from various firms like Steel Authority of India Ltd., (SAIL), Visakha Steel Plant and will store in central stores. As per the theoretical requirement, the field level Asst. Ex. Engineer and Asst. Engineer in charge of works, will give a requisition to authorized representative of contractors, to draw the materials from central stores. The representative will

furnish those requisition to the concerned Asst. Engineer of the central stores. After receiving the materials from central stores, they will be loaded into vehicles. Then the Asst. Engineer, Central Stores will issue a gate pass to allow the said vehicles to move out of the stores, through security gate. The cost of the total steel is being recovered from the contractors bills. After this, the steel will be under contractors responsibility i.e., the material is entrusted to the contractor.

The steel so received will be transported to the fabrication yard of the contractor's located at Egalapenta. There the fabrication work will be undertaken as per the schedule issued by the field officers. During fabrication, the full length rods are to be cut, which results in scrap of different lengths, which remain in the fabrication yard. The fabricated steel will be taken to work site and placed in position and then the measurements of the fabricated steel will be taken. As per the terms of the contract agreement, cut rods of length less than 2 M will not be taken back by Department. Hence, the contractor will take permission of the concerned authorities, obtain gate pass and will take away such scrap. While loading such scrap into vehicles, the security personnel of GENCO will be present. After loading weighment will be done and gate pass will be issued duly signed by Security, departmental personnel and Irrigation departmental personnel. The cut rods of length more than 2M will not be taken by contractor but should devolute to the central stores. So contractor is not supposed to take the cut rods of 2M length or more.

34,534.086 MT of reinforcement steel is drawn from central stores and paid 33,170.645 MT steel in constructions. Hence there will be 1363.441 MT of cut steel rods less than and more than 2M length. Out of 1363.441 MT of cut steel rods 1250 MT of steel is permitted to shift and 49.51 MT of steel which is more than 2M is devoluted to central stores (Vide Letter No. SE/CC.1/HP/SLM/T/F.Steel/D.1393/2001, Dt.21-8-2001 of S.E. Civil Circle-I, Srisailam Dam West). As per the version of contractor which is also confirmed by SLBHES Security Wing records (vide Letter No. ASO/SLBHES/SLMW/D. No. 368/2001, Dt.21-8-2001 of Asst. Security Officer, Srisailam Dam West) out of 1250 MT permitted steel, they shifted only 460.695 MT to Hyderabad store yard and 862.941 MT of cut steel rods (includes less than and more than 2M length) are still in contractor's store yard. But on cross verification of security check post out ward register with that of gate pass and way bill registers of Patel Engineering Company, it is revealed that 14 loads of structural steel weighing 138.980 MT (Annexure-1) and 15 loads of reinforcement (Annexure-2) steel weighing 154.980 MT is shifted from Patel Engineering Co. Store yard to Hyderabad store yard from January to May, 2001 without the knowledge of GENCO Engineers and without making entry in the security register, shows the malafide intention of the contractor. So the contractor misappropriated 138.050 MT of structural steel, 154.980 MT of reinforcement steel entrusted to the contractor.

On 17-5-2001 at 4.30 a.m. the LWs.1 to 4 caught A1 to A6 while committing theft of 550 numbers of 32 mm steel bars weighing 56 MT worth Rs.7, 84,000/- loaded in 2 lorries and 4 tippers on the instigation of A7 on Srisailam - Hyderabad road in between central stores and Domalapenta forest check post. All these 550 steel rods are more than 2 Meters of length and 4 M in length. In the process of fabrication, different sizes of rods will remain, but all these 550 bars are of 4 M size. The contractor is supposed to devolute the reinforcement steel more than 2 M in central stores. Instead of devoluting the steel rods more than 2 M in length, A7 with malafide intention instigated A1 to A6 to shift the same to Hyderabad during night hours, when security check post is closed, by covering the rods with iron sheets. Therefore A7 with the assistance of A1 to A6 committed theft of 56 MT of reinforcement steel worth Rs.7,84,000/- with an intention to misappropriate the same. Therefore the accused A1 to A7 committed an offence punishable U/s. 379, 406 IPC. Hence the Hon"ble Court is prayed to punish the accused A1 to A7 U/s.379, 406 IPC."

7. On the strength of these allegations in the charge sheet, the petitioners are being prosecuted u/s 379 and u/s 406 I.P.C. No doubt, several clauses in the agreement had been brought to my notice to convince that this is only a civil liability. Clause 10 was brought to my notice which reads as hereunder:

"The material issued for the use on works at the project site should be used for the work for which materials are issued. In no case the material of the subject work should be diverted by the contractor for other works.

However with prior approval of the Engineer-in-Chief the material issued under this agreement can be used on other works of Srisailam left bank power station only.

If the material meant for the subject work is found to have been diverted by the contractor to other project for any reason, the cost of such material will be recovered at the rate of issue rate plus 100% levy of surcharge and storage charges and centages or market rate plus 100% levy of surcharge whichever is more".

8. On the strength of the same, a contention was advanced that this dispute is only a pure civil liability and action can be initiated for the breach of the terms and conditions and hence the provisions of Sections 379 and 406 I.P.C. are not attracted.

9. The material allegations made in the charge sheet already had been specified supra and it is needless to say that those allegations are all factual allegations attracting Sections 379 and 406 I.P.C. In the decision referred (1) supra, while dealing with the exercise of powers u/s 482 of the Code, it was held by the Apex Court that the High Court should not assume the role of the trial Court and embark upon an enquiry as to the reliability of the evidence and sustainability of the accusation on a reasonable appreciation of such evidence and the power should be exercised sparingly with caution and circumspection. In the decision referred (2) supra, the Apex Court had specified certain categories of cases, which are no doubt

illustrative and not exhaustive, in which the High Court can interfere, and those are as specified hereunder:

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by Police Officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of Magistrate as contemplated u/s 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge".
10. The same view was expressed in the decisions referred (3) and (4) supra.
11. In view of the specific allegations made against the petitioners/accused, inasmuch as the allegations made in the charge sheet prima facie disclose offences under Sections 379 and 406 I.P.C. and inasmuch as all other evidentiary details cannot be gone into at the stage of deciding the present Criminal Petition filed u/s 482 of the Code, I am not inclined to exercise the powers u/s 482 of the Code.
12. Accordingly, the Criminal Petition is dismissed.